THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.6206 of 2002

Dated:18.10.2006

Between

The Bhagyanagar Cooperative Urban Bank Limited, rep., by its Deputy Registrar

.....Petitioner

and

1.D.Aruna KUmari and others.

…Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.6206 of 2002

ORDER:

This writ petiton is directed against an order dated 20.12.2001 made in CTA No.225/1991, wherein the proceedings under Section 71 of the A.P Co-operative Societies Act (for short 'the Act'), 1964 issued by the 1st respondent have been set aside and the appeal was allowed.

It seems that the lands held by the 1st respondent were sought to be auctioned, in view of a certificate under Section 71 (1) of the Act, issued in favour of the petitioner- Co-operative Bank. Aggrieved by the same, 1st respondent filed an appeal being CTA No.225 of 1991 before the Co-operative Tribunal. The Co-operative Tribunal, after an elaborate consideration of the entire

material made available before it, came to the conclusion that the petitioner-bank or its officials are not entitled to proceed against the person and property of the 1st respondent by making her liable for the amount covered by the impugned certificate 25.06.1994. Aggrieved by the same, the petitioner-Co-operative Bank filed the present writ petiton.

There is no necessity to go into all the details. It seems that no enquiry as required under Section 71 of the Act was conducted after putting the petitioner on notice. The findings recorded by the Tribunal may be necessary to be noticed, which read as under:

> "So far as the contentions of the appellant which was relied in the grounds of appeal itself about the death of the original borrower D.Babaiah on 2.4.1991 is neither disputed nor challenged by the respondent Nos.1 and 2. No doubt, the proceedings u/s.71 (1) of the Act are summary and give ample authority to the 1st respondent to issue a Certificate under Section 71 (1) of the Act after verifying the amounts outstanding by going through the records as may be produced by the 2nd respondent-bank still opportunity of being given to her and cross-examine the

witnesses that may be produced by the Bank by the affected persons especially when the claim is disputed or questioned must be given and in this regard the citations relied on by the learned counsel for the appellant reported in AIR 1962 AP page-140 (Full Bench) and the Judgment of our Hon'ble High Court of A.P., reported in 1972 APLJ Page – 13 (DB) apply in all force. In this regard, it is admittedly clear that the perusal of original records produced before us, the reference made by the 2nd respondent-bank before the 1st respondent clearly show at para-3 the column….." by notice dated ….." the date is left blank and be that as it may, by the said date of reference, the original borrower D.Babaiah was already dead since the date of death 2.4.1991 stands undisputed. In spite of reference being made by the 2nd respondent-bank about the sale deed dated 31.12.1991 belonging to the appellant by referring it to as mortgage property at column No.2 in the cause title column the name of the appellant is not shown. Further, as seen from the original records produced before us, there is another document of title dated 19.8.1987 which was deposited by one D.Venkat Swamy dated 30.03.1996, who is described as son of late D.Babaiah and further it is very curious to note from the original records produced, the sanction of loan amount was Rs.2,50,000/- on 25.6.1990 (page 27 of the original records) and

the rate of interest claimed is kept blank and though a promissory note describes “On demand we” the name of D.Babaiah only is shown as borrower. As regards the so called offer made by the appellant herein is concerned, it is dated 17.5.1991 and refers to the sum of Rs.4,95,000/- (page-59 of the original records), whereas the loan of Rs.4,95,000/- is not covered by any of the original document and that the amount referred to in the promissory note dated 26.6.1991 is Rs.6,50,000/-. If that is so, the said D.Babaiah who died on 2.4.1991 which fact remains undisputed, could have been sanctioned loan on 26.6.1991 on his execution of promissory note? And in the light of these circumstances there is any amount of force in the contention of the appellant that the appellant was not even informed about the acceptance of offer of deposit of title for a loan i.e., to be sanctioned on 26.6.1991 to a person who died on 2.4.1991 itself. That apart in the light of judgments cited by the learned counsel for the appellant and considering the entire questions of fact as appearing from the records produced before us, the impugned certification cannot be executed as against the appellant and the appellant cannot be made to stand up as offerer by depositing of title deeds by her letter dated 17.6.1981 to a loan be sanctioned to a dead person. All these aspects would have certainly come to light and the appellant been given due notice and opportunity being given

her by the learned Arbitrator. Whatever be the matter, there is absolutely no hesitation whatsoever that the offer made by the appellant was neither accepted nor the same was communicated and secondly, at any point of time there was any letter or undertaking by the appellant as guarantor or surety or co-obligant nor she was described as such in the reference made by the 2nd respondent-bank and thirdly, there could have been no positive creation of mortgage by deposit of title deed by the appellant as co-obligant or surety for the loan pertaining to 17.5.1991, since admittedly the original borrower D.Babaiah died on 2.4.1991. As such we have no hesitation whatsoever to hold that the 2nd respondent-bank or his officials are not entitled to proceed against the person and property of the appellant by making her liable for the amount covered by the impugned certificate dated 25.6.1994.

In view of the above, I am of the opinion that the Tribunal has not committed any error calling for interference of this Court under Article 226 of the Constitution of India. Writ petition is devoid of merits and is liable to be dismissed.

Accordingly, the writ petiton is dismissed. However, this will not preclude the authorities to

work out their remedies as available under law. No costs.

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18-10-2006

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